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7 FUNDING LLC

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 DOUGLAS E. BELLOWS,

Case No. 09 CV 1951 LAB WMC

11 Plaintiff,

**PETITION FOR ORDER
COMPELLING ARBITRATION**

12 v.

Date: March 22, 2010

13 MIDLAND CREDIT MANAGEMENT,
INC. AND MIDLAND FUNDING LLC,

Time: 11:15 a.m.

Courtroom: 9

14 Defendants.

Judge: The Hon. Larry A. Burns
15 Trial: None Set

17 Petitioners, Midland Credit Management Inc. and Midland Funding LLC, (collectively
18 "Midland") allege as follows:

19 1. On July 22, 2003, Plaintiff was issued a HSBC Bank Nevada, N.A. credit card (with
20 the last four digits of 5594) (the "Account"). When Plaintiff received the credit card for the
21 Account, it was accompanied by a Cardmember Agreement (the "Agreement") containing an
22 Arbitration Clause. Declaration of Stuart Austin, ¶2; a copy of the Agreement containing the
23 Arbitration Clause is attached to the Declaration of Stuart Austin as Exhibit A.

24 2. After the issuance and use of the Account, Plaintiff did not pay the outstanding
25 balance on the Account. The Account was then purchased by Atlantic Credit & Finance Special
26 Finance Unit, LLC. Declaration of Brian Frary, ¶2. Thereafter in April 2009, the Account was
27 assigned to Midland. (*Id.*)

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1 3. Notwithstanding the existence of a valid arbitration clause, Plaintiff has commenced
 2 the present action.

3 4. Plaintiff's First Amended Complaint ("FAC") asserts a class action claim for the
 4 alleged debt collection practices of Midland which fall within the ambit of the Arbitration Clause.
 5 Specifically, Plaintiff alleges that Midland included in a "dunning letter" a "privacy notice" pursuant
 6 to the Gramm-Leach-Bliley Act ("GLBA") [15 USC §6801, *et seq.*]. Plaintiff claims that Midland's
 7 "privacy notice" violates the Fair Debt Collection Practices Act ("FDCPA") [15 U.S.C. §1692 *et*
 8 *seq.*] and the California Rosenthal Act [Cal.Civ. Code §1788 *et seq.*]. The operative Arbitration
 9 Clause (Exhibit A) states, in pertinent part:

10 **ARBITRATION**

11 You agree any claim, dispute, or controversy (whether based upon
 12 contract; tort, intentional or otherwise; constitution; statute; common
 13 law; or equity and whether pre-existing, present or future), including
 14 initial claims, counter-claims, cross-claims and third party claims,
 15 arising from or relating to this Agreement or the relationships which
 16 result from this Agreement, including the validity or enforceability of
 17 this arbitration clause, any part thereof or the entire Agreement
 ("Claim"), shall be resolved upon the election of you or us, by binding
 18 arbitration pursuant to this arbitration provision and the applicable
 19 rules or procedures of the arbitration administrator selected at the time
 20 the Claim is filed. The party initiating the arbitration proceeding shall
 21 have the right to select one of the following three arbitration
 22 administrators: the National Arbitration Forum ("NAF"), the American
 23 Arbitration Association ("AAA") or JAMS....

24 5. The FAC alleges Plaintiff is "obligated or allegedly obligated to pay a debt ..." (¶17)
 25 and that he is a "natural person from whom a debt collector sought to collect a consumer debt" (¶19).
 26 Further, the FAC alleges that "this case involves money, property or their equivalent due or owing
 27 or alleged to be due or owing ... (¶21). Plaintiff goes on to allege that his "allegedly defaulted debt
 28 was purchased by, assigned to, placed or otherwise transferred to" Midland for collection. (¶¶ 33
 and 34). Thus, the claims asserted in the FAC arise out of allegations regarding debt collection on
 the Account and are therefore subject to arbitration.

29 6. On October 9, 2009, attorneys for Midland sent Plaintiff's counsel a letter requesting
 30 that Plaintiff agree to voluntarily adjudicate this lawsuit by arbitration, as required under the
 31 Agreement. A copy of that letter is attached to the Declaration of Todd F. Stevens as Exhibit B.

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Plaintiff's counsel responded stating that they would not agree to arbitration. A copy of Plaintiff's counsel's letter is attached to the Stevens' Declaration as Exhibit C.

WHEREFORE, Midland prays for an order compelling arbitration of the controversy in accordance with the Arbitration Agreement and for such other and further relief as the Court deems proper.

Dated: December 29, 2009

KEENEY WAITE & STEVENS
A Professional Corporation

By: s/ Todd F. Stevens
Todd F. Stevens
Attorneys for Defendants MIDLAND
CREDIT MANAGEMENT, INC. AND
MIDLAND FUNDING LLC